

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

v.

SERGIO Y. GONZALEZ,

Case No. 6:23-po-00255-HBK

ORDER DENYING WITHOUT PREJUDICE
GOVERNMENT'S MOTION TO DISMISS

(Doc. No. 3)

Pending before the Court is the Government's Motion to Dismiss filed on September 8, 2023. (Doc. No. 3). The Government's motion consists of a single sentence: "The United States of America, by and through Phillips A. Talbert, United States Attorney, and Jeffrey A. Spivak, Assistant United States Attorney, pursuant to Rule 48 (a) of the Federal Rules of Criminal Procedure, moves to dismiss this case in interest of justice without prejudice." (*Id.*).

On May 28, 2023, Defendant was charged with a bailable violation notice (E1562626) for carrying or storing an open container of alcohol in violation of 36 C.F.R. §4.14(b). (Doc. No. 1). Defendant failed to pay the collateral fine and his Initial Appearance is scheduled for September 12, 2023 at 1:00 P.M. (Doc. No. 2).

A "court's discretion to deny leave [under Rule 48] is limited" and is only permitted where "the motion was clearly contrary to manifest public interest." *United States v Gonzalez*, 58 F.3d 459, 461-462 (9th Cir. 1995); *United States v. Garcia-Valenzuela*, 232 F.3d 1003, 1008 (9th Cir. 2000) (finding the district court had abused their discretion in denying a Rule 48 because there

1 was “no evidence ... that the government's motion was contrary to public interest.”).
2 Nonetheless, “[t]he prosecution has the responsibility of bringing to the court’s attention the
3 grounds for dismissal.” *Fed. R. Crim. Proc. Handbook* p. 790 (2023). Indeed, “Rule 48(a)
4 operates like a sunshine provision” and “contemplates public exposure by the government of its
5 reasons for dismissing a case to prevent prosecutors from abusing their powers.” *Id.*, p. 791-92.
6 The Court will therefore deny the government’s motion without prejudice to refileing their motion
7 to include the ground(s) for dismissal.

8 Accordingly, it is hereby **ORDERED**:

- 9 1. The Government’s Motion to Dismiss (Doc. No. 3) is DENIED without prejudice.
10 2. The Court CONTINUES Defendant’s Initial Appearance for Tuesday, October 17,
11 2023 at 1:00 P.M. in Yosemite.

12
13 Dated: September 11, 2023


HELENA M. BARCH-KUCHTA
UNITED STATES MAGISTRATE JUDGE